IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 28479 of 2007(M)

AGAINST THE ORDER IN IA. 736 /2007 IN OS.199/2003 of MUNSIFF COURT, TIRUR

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PETITIONERS:

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1. BEEKKUTTY HAJJUMMA,
D/O.KALODI KUNHAHAMMED HAJI, TIRUR TALUK,
PONMUNDAM AMSOM DESOM.

2. MUHAMMEDKUTTY HAJI,
S/O.VALIYAPEEDIYEKKAL VEERANKUTTY, TIRUR TALUK,
PONMUNDAM AMSOM DESOM.

BY ADV. SRI.K.RAMACHANDRAN
SMT.A.R.DIVYA

RESPONDENTS:

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1. KUZHIKKARAKATTIL HANEEFA,
S/O.SAIDALIKKUTTY, TIRUR TALUK, PONMUNDAM AMSOM,
CHILAVIL DESOM.

2. KADEEJA, W/O.SAIDALIKUTTY,
TIRUR TALUK, PONMUNDAM AMSOM, CHILAVIL DESOM.

3. MOIDEEN, S/O.SAIDALIKKUTTY,
KUZHIKKARAKKATTIL, TIRUR TALUK,
PONMUNDAM AMSOM, CHILAVIL DESOM.

4. YOUSUF, S/O.KUZHIKKARAKKATTIL
SAIDALIKKUTTY, TIRUR TALUK, PONMUNDAM AMSOM,
CHILAVIL DESOM.

5. RASHEED, S/O.KUZHIKKARAKKATTIL
SAIDALIKKUTTY, TIRUR TALUK, PONMUNDAM AMSOM,
CHILAVIL DESOM.

6. MANSUR,
S/O.KUZHIKKARAKKATTIL SAIDALIKKUTTY,
TIRUR TALUK, PONMUNDAM AMSOM, CHILAVIL DESOM.

7. THITHUMMA,
S/O.KUZHIKKARAKATTIL SAIDALIKKUTTY,
TIRUR TALUK, PONMUNDAM AMSOM, CHILAVIL DESOM.

8. RASEENA,
D/O.KUZHIKKARAKKATTIL SAIDALIKKUTTY,
TIRUR TALUK, PONMUNDAM AMSOM, CHILAVIL DESOM.

9. THASLINA,
D/O.KUZHIKKARAKKATTIL SAIDALIKKUTTY,
TIRUR TALUK, PONMUNDAM AMSOM,
CHILAVIL DESOM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.28479 OF 2007

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Dated this the 26th day of September 2007

JUDGMENT

This writ petition is filed for a direction to set aside Ext.P2 order passed in I.A.No.736/2007 in O.S.No.199 of 2003. The said application is one for remitting the Commissioner's plan and report. The grievance of the petitioners is that the Commissioner had already submitted the report and it does not contain the necessary details for a proper determination of the case. It is also submitted that the Commissioner has not properly estimated the value by removal of the soil. The court below was of the opinion that there are sufficient materials and so no remission is necessary. Learned counsel for the petitioners would submit that the said approach is erroneous and it is very clear from the Commissioner's report itself that the property of the defendants has not been measured with respect to the title deeds. The question whether the measurement of the property of the defendants is also necessary for a proper appreciation and disposal of the case is a matter that the court may have to consider at the stage of evidence.

2. Therefore, I leave it open to the court below and also for the petitioners to adduce evidence in support of their contentions and also

regarding the insufficiency of the Commissioner's plan and report and if the court at any stage is convinced that the materials are not sufficient to decide the case then the court can remit the Commissioner's plan and report to the same Commissioner for further details. Untrammelled by the observations contained in the order, the learned Munsiff is directed to proceed with the trial allowing the parties to adduce evidence including the necessity or the insufficiency of the materials supplied by the Commissioner for a proper disposal of the case.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-